

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSEPH J. FLOWERS, ) No. C 08-4179 CW (PR)  
 )  
Plaintiff, )  
 ) SECOND ORDER OF DISMISSAL  
v. ) WITH LEAVE TO AMEND  
 )  
ALAMEDA COUNTY SHERIFF GREGORY )  
AHERN, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

Plaintiff Joseph Flowers, who is currently incarcerated in the Marin County Jail, filed a pro se complaint under 42 U.S.C. § 1983.

On July 1, 2009, the Court issued an order of dismissal with leave to amend. The Court summarized Plaintiff's claims as follows:

Plaintiff alleges multiple constitutional violations, which he experienced while he was incarcerated at Santa Rita County Jail and North County Jail in 2007. (Compl. at 3-18.) He claims he was given "spoiled and unhealthy" meals, subjected to "solitary confinement as a result of his refusal to cease and desist from practicing law," subjected to mail tampering, "beaten near death," subjected to deliberate indifference to his serious medical needs, "sexually assaulted and discriminated against upon at least fourteen different occasions," housed in administrative segregation for "the duration of [his] incarceration for unfound reasons," and placed in a cell with "mainline inmates," who "ransacked" the cell and "abused" him. (Id.)

Plaintiff names the following as Defendants: Alameda County Sheriff Gregory Ahern and Alameda County Sheriff's Deputies H.C. McKenzie, J. DeLeon, R. Kull, A. Valvedia [sic], Smith, Fischer, C. Delima, and Jones, as well as "others not yet named." (Id. at 1.) He seeks injunctive relief and monetary damages.

(July 1, 2009 Order at 1-2.)

The Court dismissed Plaintiff's claims for injunctive relief.

1 His claims for monetary damages against jail officials at the  
2 Santa Rita County Jail and the North County Jail were dismissed  
3 with leave to amend. Plaintiff was directed to "amend his  
4 complaint to state that he seeks damages, and to allege  
5 specifically how each named defendant actually and proximately  
6 caused the deprivation of a federally protected right, as directed  
7 below." (July 1, 2009 Order at 3 (citing Leer v. Murphy, 844 F.2d  
8 628, 634 (9th Cir. 1988).) Plaintiff's claims against the Oakland  
9 Police Department (OPD) stemming from a traffic stop on March 20,  
10 2007 were found to be "unrelated to Plaintiff's claims against the  
11 named defendants from the Alameda County Sheriff's Department."  
12 (July 1, 2009 Order at 3.) Because Plaintiff had "not properly  
13 joined the claims against the OPD officers with his civil rights  
14 action against these named defendants," the Court directed  
15 Plaintiff to "bring those claims in a separate lawsuit against  
16 these officers." (Id.) In addition, Plaintiff's complaint was  
17 deficient because he "did not specifically address exhaustion of  
18 the jails' grievance procedure." (Id. at 5.) The Court also  
19 found that Plaintiff had "not linked any of the named Defendants  
20 to his claims," and stated that "no claim for damages can proceed  
21 unless Plaintiff amends his complaint to cure this pleading  
22 deficiency." (Id. at 6.) Finally, the Court dismissed  
23 Plaintiff's claim against the unnamed defendants. (Id. at 7.)  
24 The Court gave Plaintiff a thirty-day deadline to file an amended  
25 complaint providing factual and legal bases for his claims.

26 On August 3, 2009, Plaintiff filed an amended complaint. In  
27 his amended complaint, Plaintiff again alleges multiple  
28 constitutional violations. (Am. Compl. at 3.) He states that:

1 . . . Alameda County, SAC County, Marin County  
2 Sheriff's, Oakland Police Dept. and Hayward Police Dept.  
3 all acted in concert in a conspiracy from on or about 3-  
4 20-07 till currently, to deprive and invade Plaintiff['s]  
5 personal constitutional rights. The defendants used  
6 server [sic] unlawful tactics and procedures throughout  
7 the course of the overt acts herein; they beat Plaintiff  
8 near death, threatened [sic] Plaintiff with fear and  
9 intimidation, invaded into Plaintiff's attorney client  
10 relationships unlawfully using monitoring tatics [sic],  
11 easedropping [sic] survalince [sic] . . . opening legal  
12 mail outside the prences [sic] of Plaintiff while held in  
13 A/S confinement units for unreasonable reasons, denied  
14 medical treatments . . . .

15 (Id.) He also attaches twenty-two single-spaced handwritten pages  
16 entitled "Supplemental with Points and Authorities Under Rules  
17 15(a) - 15(c) (Amended Complaint)." (Attach. at 1.)

18 Plaintiff names the following as Defendants: Alameda County  
19 Sheriff Gregory Ahern; Alameda County Sheriff's Deputies H.C.  
20 McKenzie, R. Kull, A. Valvedra, W. Posey, Jones, Fisher, Smith, C.  
21 Delima; Marin County Sheriff's Deputies Robert T. Doyle, J. Baker,  
22 "G. F.," and "S. S.," Sacramento County Sheriff's Deputies John  
23 McGinness, and G. Hogan; Oakland Police Officers C. Crabtree, S.  
24 Armerding, D. Walker, J. Doolittle, J. Clement; and the Hayward  
25 Police Department. (Id. at 1.) Plaintiff seeks monetary damages.

#### 26 DISCUSSION

##### 27 I. Legal Claims

28 Plaintiff's amended complaint is mostly handwritten.  
Although Plaintiff used the Court's civil rights complaint form  
when he filed his amended complaint, as mentioned above, he has  
attached twenty-two additional pages containing claims that cover  
a variety of topics. He begins by stating that the "named above  
defendants all acted in one way or another in connection to  
deprive the Plaintiff of several U.S. Constitutional Rights (the

1 First, Fourth, Fifth, Six [sic], Eight [sic] and Fourteenth [sic]  
2 Amendments.) All Defendants acted unlawful[ly] and with the  
3 intent to commit an unlawful act." (Attach. at 1.) However,  
4 Plaintiff does not clearly support his claims with facts relating  
5 to these alleged violations. He has merely attached twenty-two  
6 additional pages outlining his conclusory claims in an unorganized  
7 fashion.

8 It is impossible to ascertain from Plaintiff's conclusory  
9 allegations in his amended complaint what claims he seeks to bring  
10 in federal court, much less how he exhausted his administrative  
11 remedies as to those claims. His attachments also confuse matters  
12 further by raising new arguments and claims.

13 "The Federal Rules require that averments 'be simple,  
14 concise, and direct.'" McHenry v. Renne, 84 F.3d 1172, 1177 (9th  
15 Cir. 1996). Prolix, confusing complaints such as the amended  
16 complaint Plaintiff has filed impose unfair burdens on litigants  
17 and the court and fail to perform the essential functions of a  
18 complaint. Cf. id. at 1179-80. Accordingly, Plaintiff's amended  
19 complaint is DISMISSED with leave to amend in order to give  
20 Plaintiff the opportunity to file a simple, concise and direct  
21 complaint which states clearly and succinctly each claim he seeks  
22 to bring in federal court and explains how he has exhausted his  
23 administrative remedies as to each claim. Plaintiff's original  
24 complaint alleged multiple constitutional violations, which he  
25 experienced while he was incarcerated at Santa Rita County Jail  
26 and North County Jail in 2007. Therefore, Plaintiff's amended  
27 complaint may include only claims against the named Defendants  
28 from the Alameda County Sheriff's Department, as directed below.

1 II. Defendants

2 A. Defendants from the Alameda County Sheriff's Department  
3 Plaintiff must allege facts sufficient to show that the  
4 actions of the named Defendants from the Alameda County Sheriff's  
5 Department (ACSD) rise to the level of constitutional violations.  
6 As mentioned above, he is attempting to hold prison officials from  
7 the ACSD -- specifically Defendants Ahern, McKenzie, Kull,  
8 Valvedia, Posey, Jones, Fisher, Smith, Delima -- liable for the  
9 claims in the amended complaint. Plaintiff must allege facts  
10 showing what each defendant did that violated his constitutional  
11 rights. See Leer, 844 F.2d at 634 (sweeping conclusory  
12 allegations will not suffice; the plaintiff must instead set forth  
13 specific facts as to each individual defendant's actions which  
14 violated his or her rights). If Plaintiff claims that any of the  
15 named Defendants are liable as supervisors, he must allege that  
16 these Defendants "participated in or directed the violations, or  
17 knew of the violations and failed to act to prevent them." Taylor  
18 v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor may be  
19 liable under § 1983 upon a showing of personal involvement in the  
20 constitutional deprivation or a sufficient causal connection  
21 between the supervisor's wrongful conduct and the constitutional  
22 violation. Redman v. County of San Diego, 942 F.2d 1435, 1446  
23 (9th Cir. 1991) (en banc) (citation omitted). A supervisor  
24 therefore generally "is only liable for constitutional violations  
25 of his subordinates if the supervisor participated in or directed  
26 the violations, or knew of the violations and failed to act to  
27 prevent them." Taylor, 880 F.2d at 1045. A supervisor may be  
28 liable for implementing "a policy so deficient that the policy

1 itself is a repudiation of constitutional rights and is the moving  
2 force of the constitutional violation." Redman, 942 F.2d at 1446;  
3 see Jeffers v. Gomez, 267 F.3d 895, 917 (9th Cir. 2001).

4 Because Plaintiff has not linked any of the named Defendants  
5 from the ACSD to his claims, no claim for damages can proceed  
6 unless Plaintiff amends his complaint to cure this pleading  
7 deficiency.

8 B. Defendants from the Oakland Police Department, the  
9 Hayward Police Department, and the Marin County  
Sheriff's Department

10 As mentioned above, the Court has previously instructed  
11 Plaintiff that if he wished to sue the officers from the OPD  
12 stemming from the traffic stop on March 20, 2007, then "he may  
13 bring those claims in a separate lawsuit against these officers."  
14 (July 1, 2009 Order at 3.) In his amended complaint, Plaintiff  
15 has named Defendants from the OPD. He has also added named  
16 Defendants from the Marin County Sheriff's Department (MCSD).  
17 Finally, Plaintiff has named the Hayward Police Department (HPD)  
18 as a Defendant in his amended complaint; however, Plaintiff has  
19 not named specific Defendants from the HPD. Any claims Plaintiff  
20 may have against specific Defendants from the HPD and from the  
21 MCSD are unrelated to his claims against the named Defendants from  
22 the ACSD and are not properly joined with his civil rights action  
23 against the named ACSD Defendants. Accordingly, all claims  
24 against the OPD, HPD and MCSD Defendants are DISMISSED without  
25 prejudice to bringing those claims in separate lawsuits against  
26 these Defendants.

1 C. Defendants from the Sacramento County Sheriff's  
2 Department

3 If Plaintiff seeks to bring an action in federal court  
4 against named Defendants from the Sacramento County Sheriff's  
5 Department (SCSD), he must file a civil rights complaint under 42  
6 U.S.C. § 1983 in the Eastern District of California. Accordingly,  
7 all claims against named Defendants from the SCSD are DISMISSED  
8 without prejudice.

9 CONCLUSION

10 For the foregoing reasons, the Court orders as follows:

11 1. Plaintiff's amended complaint is DISMISSED with leave to  
12 amend. The amended pleading must be on the Court's civil right  
13 complaint form and must include the caption and civil case number  
14 used in this Order -- No. C 08-4179 CW (PR) -- and the words  
15 SECOND AMENDED COMPLAINT on the first page. Because his second  
16 amended complaint will completely replace the original and amended  
17 complaints, Plaintiff must include in it all the claims he has  
18 been given leave to present. See Ferdik v. Bonzelet, 963 F.2d  
19 1258, 1262 (9th Cir.), cert. denied, 506 U.S. 915 (1992); King v.  
20 Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987); London v. Coopers &  
21 Lybrand, 644 F.2d 811, 814 (9th Cir. 1981). He may not  
22 incorporate material in his second amended complaint from his  
23 original or amended complaints by reference. Plaintiff may  
24 include only his claims of constitutional violations against the  
25 named Defendants from the Alameda County Sheriff's Department,  
26 which he experienced while he was incarcerated at Santa Rita  
27 County Jail and North County Jail in 2007. Failure to file a  
28 proper second amended complaint within the thirty-day deadline  
will result in the dismissal of this action without prejudice for

1 failure to exhaust administrative remedies and for failure to  
2 state a claim upon which relief may be granted.

3 3. All claims against the named OPD, HPD and MCS  
4 Defendants are DISMISSED without prejudice to bringing those  
5 claims in a separate lawsuit against these Defendants.


6 4. All claims against named Defendants from the SCSD are  
7 DISMISSED without prejudice. If Plaintiff seeks to bring an  
8 action in federal court against these Defendants, he must file a  
9 civil rights complaint under 42 U.S.C. § 1983 in the Eastern  
10 District of California.

11 5. It is Plaintiff's responsibility to prosecute this case.  
12 Plaintiff must keep the Court informed of any change of address  
13 and must comply with the Court's Orders in a timely fashion.  
14 Failure to do so may result in the dismissal of this action for  
15 failure to prosecute pursuant to Federal Rule of Civil Procedure  
16 41(b).

17 6. The Clerk of the Court shall send Plaintiff a blank  
18 civil rights form along with a copy of this Order.

19 IT IS SO ORDERED.

20 DATED: 2/3/10



21 CLAUDIA WILKEN  
22 United States District Judge  
23  
24  
25  
26  
27  
28

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 JOSEPH J. FLOWERS,

5 Plaintiff,

Case Number: CV08-04179 CW

6 **CERTIFICATE OF SERVICE**

7 v.

8 ALAMEDA COUNTY SHERIFF et al,

9 Defendant.  
10 \_\_\_\_\_/

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
12 Court, Northern District of California.

13 That on February 3, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
16 located in the Clerk's office.

17 Joseph J. Flowers  
18 Marin County Jail  
19 13 Peter Behr Dr.  
20 San Rafael, CA 94903

w/ blank civil rights form

21 Dated: February 3, 2010

22 Richard W. Wieking, Clerk  
23 By: Sheilah Cahill, Deputy Clerk  
24  
25  
26  
27  
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